IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR. JUSTICE N.V. RAMANA

WRIT PETITION NO : 21527 of 1995

Between:

M/s Surana Commercial Co., 642 Sadar Bazar, Bolaram, Secunderabad per Managing Partner Santilal Surana, S/o. Jawarilal Surana, Adult with address as that of the firm.

..... PETITIONER

AND

1 The Food Corporation of India, Khadya Sadan, 16-20 Barakamba lane, New Delhi. represented by its Chairman.

2 The Senior Regional Manager, Food Corporation of India Regional Office, HACA Bhavan, III floor, Hyderabad-4.

3 The Senior Regional Manager Food Corporation of India Regl. Office, Bhopal.

(Case against respondent Nos.1 & 3 is dismissed for default as per Court order dated 24-7-2000)

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate order or direction or Writ, one more in the nature of Writ of Mandamus directing the respondents to settle the accounts of the petitioner relating to the 5 contracts listed in paras 3 and 7 of the accompanying affidavit, in private negotiations with the Petitioner.

For the Petitioner: MR.P.RAM SHAH, Advocate.

For the Respondent No.1: (Dismissed for default)

For the Respondent No.2: MR. B. ANJANEYULU, (SC FOR FCI)

For the Respondent No.3: (Dismissed for default)

The Court made the following :

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THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 21527 of 1995

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O r d e r:

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The petitioner-M/s. Surana Commercial Co., Secunderabad filed this writ petition seeking a direction to the respondents to settle its accounts by negotiations in relation to four contracts bearing Nos. D1(9)/77-78, D1(19)77-78, D1(37)77-78, D1(38)77-78 and one Supplementary Agreement dated 19-5-1978 entered into with the respondents.

The petitioner claims to be contractor for the four contracts in question entered into by it with the third respondent-Senior Regional Manager, Food Corporation of India, Bhopal representing the first respondent-Food Corporation of India, New Delhi, during the year 1977-78, for milling Arhar whole into Dal, and it also furnished bank guarantees worth Rs.29,18,335/- to the respondents in respect of the said contracts. It performed the contracts successfully, but some differences arose between it and the third respondent in respect of the quality of Arhar Dal delivered, for which the petitioner entered into Supplementary Agreement dated 19-5-1978 for upgradation and replacement of Arhar Dal rejected by the Reserve Grain Depot at Lucknow. Thereafter, in the arbitration proceedings in respect of four contracts, and the Court proceedings in O.S. No.574 of 1981 on the file of IV Additional Judge, City Civil Court, Hyderabad, in respect of the Supplementary Agreement, the Arbitrator fixed the liability of the petitioner in respect of the four contracts at Rs.6,89,315/-, Rs.27,172/-, Rs.3,55,000/- and Rs.4,11,336/- respectively and the Civil Court fixed the liability of the petitioner in respect of the Supplementary agreement at Rs.5,37,642/-, aggregating to Rs.20,10,465/-.

The petitioner states that though its liability is to the extent of Rs.20,10,465/- under the said contracts and the supplementary agreement, the respondents encashed the bank guarantees furnished by it from Bank of Rajasthan and Bank of Baroda, to the extent of Rs.21,98,060/- by drawing an excess amount of Rs.1,87,595/- over and above its liability. According to the petitioner, there are still unencashed bank guarantees worth more than Rs.7,00,000/- with the respondents, out of the total bank guarantees of Rs.29,18,335/- furnished by it. The grievance of the petitioner is that despite its repeated representations to settle the accounts under the said contracts and the supplementary agreement, the respondents have not settled the accounts so far. Hence, the present writ petition.

On behalf of all the respondents, the third respondent filed counter-affidavit denying the averments made in the affidavit filed in support of the writ petition. It is stated that the petitioner furnished bank guarantees worth Rs.27,20,585/- and not worth Rs.29,18,335/- as contended by it in the affidavit filed in support of the writ petition. They admitted the liability of the petitioner to the extent of four contracts as detailed in the writ petition, but disputed its liability in respect of the supplementary Agreement, which according to them, is an amount of Rs.5,37,642/- plus an amount of Rs.14,00,000/- towards interest at 6% per annum from 08-06-1981 as per the decree, dated 25-1-1983 in O.S.574 of 1981on the file of IV Additional District Judge, Hyderabad. It is also stated that the total liability of the petitioner under the four contracts and the supplementary agreement works out to Rs.20,20,465/- and not Rs.20,10,465/- as stated by the petitioner, and according to them, in addition to the interest awarded in O.S. No.574 of 1981, and after settling the amounts under contract Nos. 3 and 4, the petitioner still owes to the respondents a sum of Rs.26,57,990-96 ps. It is further stated that some suits are pending before competent civil courts for dishonour of the bank guarantees furnished by the petitioner and the appeal filed by the petitioner in respect of its claim for Rs.27,86,273-62 ps. is also pending before the Hon'ble Supreme Court of India. It is also stated that the writ petition is not maintainable, since the petitioner is seeking to enforce contractual obligations arising out of the four contracts and the supplementary Agreement. Thus, the respondents pray to dismiss the writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the second respondent-Food Corporation of India.

It is contended by the petitioner that the respondents are due to it an amount of more than Rs.8,87,595/- under the four contracts and the supplementary Agreement in question, and therefore, it seeks a direction to the respondents to settle the accounts in respect of the said contracts and the supplementary Agreement. The said contention was denied by the respondents by stating that no amount is due to the petitioner, and in fact, the petitioner owes to them an amount of Rs.26,57,990-96 ps. It is also stated by the respondents that the matter is *sub judice* before Civil Courts, as the suits filed by the respondents herein for dishonour of the bank guarantees furnished by the petitioner in respect of the contracts in question, are pending before the competent civil Courts at Indore, Madhya Pradesh, and an appeal preferred by the respondents is also pending before the Hon'ble Supreme Court of India. The *lis* between the parties appears to be arising out of some contractual obligations under contractual agreements and the supplementary Agreement, which cannot be enforced by way of proceedings in a writ petition. Whether any amount is due by the respondents to the petitioner or whether the petitioner owes any amount to the respondents under the four contracts in question and the supplementary Agreement, are all disputed questions of fact, which cannot be gone into by this Court in a proceeding under Article 226 of the Constitution of India. The remedy of the petitioner, if any, is to approach the competent civil court and file a civil suit and agitate his claim or liability. This apart, the writ petition as against the main respondents, namely respondent Nos. 1 and 3, was dismissed for default as per the Court Order, dated 24-7-2000, and no petition is filed to set aside the same.

For the foregoing reasons, the writ petition is dismissed. However, this order does not preclude the petitioner to take appropriate remedy available to it under law to file a civil suit for appropriate relief, if it is so advised. No costs.

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N.V. RAMANA, J

Date: -11-2004

KSR/SVV

To

1 The Chairman, Food Corporation of India, Khadya Sadan,
16-20 Barakamba lane, New Delhi.

2 The Senior Regional Manager, Food Corporation of India
Regional Office, HACA Bhavan, III floor, Hyderabad-4.
3 The Senior Regional Manager Food Corporation of India
Regl. Office, Bhopal.

4 Two CD copies.